

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violations of Article 19 of the
Environmental Conservation Law and Parts 201 and 212
of Title 6 of the New York State Codes, Rules and
Regulations

ORDER ON CONSENT

File No. 21-35
R9-20211108-111

-By-

Buffalo Sewer Authority,

Respondent

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (the Department or DEC) is an Executive Agency of the State of New York (the State) with jurisdiction over the environmental policy and programs of the State pursuant to the provisions of the New York State Environmental Conservation Law (ECL) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR or the Regulations).
2. The Department's jurisdiction includes, *inter alia*, the abatement and control of air pollution in the State pursuant to the provisions of ECL Article 19 and the regulations promulgated thereunder at 6 NYCRR Part 200, *et seq.*
3. This Order on Consent (the Order) is issued in accordance with the Department's enforcement authority pursuant to ECL Articles 3 and 71.

Parties

4. Buffalo Sewer Authority (Respondent) is a public benefit municipal corporation, organized and existing under the laws of the State of New York.
5. Respondent is a person as defined in ECL 19-0107(1) and 6 NYCRR 200.1(bi).

Facts

6. Respondent owns and operates the Bird Island Sewage Treatment Plant (STP) located at 90 West Ferry Street in the City of Buffalo, New York (Facility). Part of those operations involves the use of two multiple hearth incinerators (MHI) for the disposal of sewage sludge at the Facility.

7. The Facility is a stationary source, which is defined under the Clean Air Act, 42 USC §7401, et seq., 40 C.F.R. §61.02, ECL 19-0107 and 6 NYCRR 200.1(cd) as any building, structure, facility, or installation that emits or may emit any air pollutant.
8. Pursuant to 6 NYCRR 201, the Department issued Respondent Title V Air Permit No. 9-1402-00154/00007, with an effective date of September 9, 2016 (Permit), which imposes certain requirements for the operation of the MHI. The Permit expired on September 8, 2021 but has been extended, and remains in full force and effect, pursuant to State Administrative Procedures Act until a new Title V permit is issued by the Department.
9. Department staff performed a Full Compliance Evaluation of the Facility on September 24, 2020 to determine Respondent's compliance with the Permit.
10. Department staff issued a Notice of Violation (NOV), dated October 2, 2020, to Respondent for the failure to submit semiannual and annual deviation and compliance reports for calendar years 2019 and 2020.
11. Respondent submitted the reports following receipt of the NOV. However, the documents and further follow up with Respondent revealed additional violations regarding refresher training of qualified sewage sludge incineration (SSI) unit operators. Specifically, Respondent gave its initial Department-approved SSI unit operator training as its annual refresher course for years 2017, 2018 and 2020 without having it approved by the Department as a refresher course prior to conducting such training. Consequently, the employees that participated in the refresher training during that time period are not considered to have taken refresher training as required. In addition, BSA did not administer a refresher training course for its employees in 2019.
12. Respondent also failed to timely submit AERMOD modeling results for arsenic and mercury to determine compliance with 6 NYCRR 212 requirements.

Provisions of Law

13. ECL 3-0301(1)(i) provides that it is the responsibility of the Department to carry out the environmental policy of the State including providing for the prevention and abatement of all air pollution including, but not limited to, that related to hazardous substances, particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids.
14. 6 NYCRR 200.7 and Permit condition 10 provides that any person who owns or operates an air contamination source which is equipped with an emission control device shall operate such device and keep it in a satisfactory state of maintenance and repair in accordance with ordinary and necessary practices, standards and procedures required to operate such device effectively.

15. 6 NYCRR 201-6.4(a)(2) provides that a permittee must comply with all Title V permit conditions. Any permit non-compliance constitutes a violation of the Clean Air Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
16. 6 NYCRR 201-6.4(c)(3)(ii) and Permit Condition 5 require the submission of a semiannual deviation report to the Department at least every six months reporting permit deviations and incidences of noncompliance, stating the probable cause of such deviations, and any corrective actions or preventive measures taken.
17. 6 NYCRR 201-6.4(e) and Permit Condition 6 require the submission of an annual compliance report to the DEC each calendar year certifying the compliance status of each permit requirement.
18. 40 CFR 60.5235(c) and Permit Condition 76 require the owner or operator of a SSI unit to submit an annual compliance report to DEC in accordance with 40 CFR 60.5235(c), 40 CFR 60.5235(h) and Table 6.
19. 40 CFR 60.5235(d) and Permit Condition 77 require the owner or operator of a SSI unit to submit semiannual deviation reports to DEC in accordance with 40 CFR 60.5235(d), 40 CFR 60.5235(h) and Table 6.
20. 40 CFR 60.153(b)(1) and Permit Condition 92 require continuous measurement and recording of the pressure drop of the gas flow through the wet scrubbing device used to control emissions from the MHI. In accordance with 40 CFR 60.155, BSA is to submit to the U.S. Environmental Protection Agency (EPA) and DEC semiannually a report that contains the average scrubber pressure drop measurements for each period of 15 minutes duration or more during which the pressure drop of the scrubber was less than 30 percent from the average scrubber pressure drop measured during the most recent performance test.
21. 40 CFR 60.153(b)(2) and Permit Condition 93 require continuous measurement and recording of the oxygen content of the incinerator exhaust gas. In accordance with 40 CFR 60.155, BSA is to submit to EPA and DEC semiannually a report that contains a record of average oxygen content in the incinerator exhaust gas for each period of 1-hour duration or more that the oxygen content of the incinerator exhaust gas exceeds the average oxygen content measured during the most recent performance test by more than 3 percent.
22. 40 CFR 60.5130 and Permit Condition 35 require an operator of a SSI unit be fully trained and certified as described in 40 CFR 60.5130 and 40 CFR 60.5145. A SSI unit cannot be operated unless a fully trained and qualified SSI unit operator is on-site or able to be at the facility within one hour. A trained and

- qualified SSI unit operator may operate the SSI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. To be fully trained and qualified, the operator must successfully complete a Department approved training course and maintain that training through Department approved annual refresher courses. Qualification is valid from the date on which the training course is completed, and the operator successfully passes the examination required under §60.5130(c)(2).
23. 40 CFR 60.5145 and Permit Condition 37 provides that in order to maintain qualification, an operator must complete an annual review or refresher course covering, at a minimum, the five topics described in paragraphs (a) through (e) of that section. The annual refresher course and instructor(s) must be approved by DEC. Tests and attendee sign-in must be administered by an approved outside contractor or DEC representative.
 24. Pursuant to Permit Condition 39, the owner or operator of a SSI unit must meet the criteria in §60.5155 (a) or (b) during periods when a qualified operator is not accessible within the specified time period: (a) if a qualified operator is not accessible for more than 8 hours, the SSI unit may be operated for less than 2 weeks by other plant personnel who are familiar with the operation of the SSI unit and who have completed a review of the information specified in 40 CFR 60.5160 within the past 12 months and include this deviation in their annual report as specified under 40 CFR 60.5235(d); or (b) if a qualified operator will not be accessible for 2 weeks or more, the facility must notify DEC of this deviation in writing within 10 days and submit a status report to DEC every 4 weeks outlining what the facility is doing to ensure that a qualified operator is accessible, stating when the facility anticipates that a qualified operator will be accessible, and requesting approval from the Department to continue operation of the SSI unit.
 25. 6 NYCRR 212-2.1(a) and Permit Condition 101 require the Facility to demonstrate compliance with §212-2.3(b) Table 4 requirements using a dispersion model for arsenic within one year of the issuance of the Title V permit. A Toxic-Best Available Control Technology (T-BACT) analysis may also be required.
 26. 6 NYCRR 212-2.1(a) and Permit Condition 102 require the Facility to conduct a toxic impact analysis (TIA), including dispersion modeling for mercury, to demonstrate compliance with §212-2.3(b) within one year of the issuance of the Title V permit. A T-BACT analysis may also be required.
 27. ECL 71-2103 provides that any person who violates Article 19 of the ECL, or any rule or regulation promulgated thereto, shall be liable for a civil penalty of up to \$18,000 for each violation and an additional penalty not to exceed \$15,000 for each day that the violation continues. In the event of a second or any further violation, the liability shall be for a penalty not to exceed \$26,000 for

said violation and an additional penalty not to exceed \$22,500 for each day during which violation continues.

Violations

28. Respondent failed to timely submit semiannual deviation reports for calendar year 2019 and the first half of 2020 in violation of 6 NYCRR 201-6.4(c)(3)(ii) and Permit Condition 5.
29. Respondent failed to timely submit an annual compliance report for calendar year 2019 in violation of 6 NYCRR 201-6.4(e) and Permit Condition 6.
30. Respondent failed to timely submit a compliance report for calendar year 2019 in violation of 40 CFR 60.5235(c), 40 CFR 60.5235(h) and Table 6 and Permit Condition 76.
31. Respondent failed to timely submit semiannual deviation reports for calendar year 2019 and the first half of 2020 in violation of 40 CFR 60.5235(d), 40 CFR 60.5235(h) and Table 6 and Permit Condition 77.
32. Respondent failed to timely submit semiannual reports for calendar year 2019 and the first half of 2020 in violation of 40 CFR 60.153(b)(1) and Permit Condition 92.
33. Respondent failed to timely submit semiannual reports for calendar year 2019 and the first half of 2020 in violation of 40 CFR 60.153(b)(2) and Permit Condition 93.
34. Respondent failed to maintain qualified SSI unit operators on-site at all times the Facility's SSIs were operated during calendar years 2017 through 2020 in violation of 40 CFR 60.5130 and Permit Condition 35.
35. Respondent failed to comply with the SSI unit operator annual refresher course requirements for calendar years 2017 through 2020 in violation of 40 CFR 60.5145 and Permit Condition 37.
36. Respondent failed to notify DEC that qualified operators were not available to operate the SSI units for calendar years 2017 through 2020 in violation of 40 CFR 60.5145 and Permit Condition 39.
37. Respondent failed to timely submit final AERMOD modeling results after approval of the final AERMOD Protocol V3 on October 22, 2020 in violation of 6 NYCRR 212-2.1 and Permit Condition 101.
38. Respondent failed to properly maintain and operate the wet scrubber and ancillary equipment for the SSI units which resulted in bypass events periodically during the period of March 27, 2019 to December 17, 2021 in violation of 6 NYCRR 200.7 and Permit condition 10.

39. Respondent affirmatively waives its right to a hearing as provided by law and consents to the issuing and entry of this Order pursuant to the provisions of Article 19 and 71 of the ECL and agrees to be bound by the provisions, terms, and conditions contained in this Order and attachments thereon.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

- I. **Compliance.** Respondent is bound by, and agrees to follow and comply with, the terms, provisions and requirements set forth in this Order, including Appendix A, which is incorporated and made enforceable herein.
- II. **Civil Penalty.** With respect to the violations identified in this Order, the Department hereby assesses against the Respondent a civil penalty in the amount of Forty-five Thousand Dollars (\$45,000) to be paid as follows:
 - A. **Payable Penalty.** Thirty Thousand Dollars (\$30,000) shall be paid when Respondent signs this Order and returns it to the Department. This Order on Consent, along with any applicable submissions shall be sent to the Department of Environmental Conservation, Office of General Counsel, Region 9, 700 Delaware Avenue, Buffalo, New York 14209, attention: Terri Mucha, Esq.
 - B. **Suspended Penalty:** The remaining penalty amount, Fifteen Thousand Dollars (\$15,000), shall be suspended, and shall not be payable provided that Respondent fully complies with the requirements of this Order, including all incorporated Appendices and Attachments. If, in the Department's sole discretion, Respondent violates any term of this Order, including the Schedule of Compliance, the whole amount of the suspended penalty, or any portion thereof, shall be due from Respondent within 30 days of receiving written notice from the Department that penalties are due.
 - C. The civil penalty shall be paid by electronic payment at <http://www.dec.ny.gov/about/61016.html#On-Line> or by check made payable to the order of the "New York State Department of Environmental Conservation," with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check, which shall be sent to the Department of Environmental Conservation, Division of Management and Budget Services, 625 Broadway, 10th Floor, Albany, NY 12233-4900.
 - D. This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondent, his trustees, officers, employees, successors and assigns for the above-referenced violations.

- III. Default of Payment.** The penalty assessed in this Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order will constitute a debt owed to the State of New York when and if such penalty becomes due.
- IV. Scope of Settlement.** This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondent, its trustees, officers, employees, successors and assigns for the above-referenced violations. This Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge, or which occur after the effective date of this Order.
- V. Reservation of Rights.** This Order on Consent does not bar, diminish, adjudicate or in any way affect the Department's rights or authorities, except as set forth in the Order on Consent, including but not limited to, exercising summary abatement powers, recovery of any Natural Resource Damages, the collection of regulatory fees, and requiring the Respondent to undertake any additional measures required for the protection of human health or the environment. The Order on Consent also does not bar, diminish, adjudicate, or in any way affect the right of Respondent to contest allegations, determinations and/or legal assertions made by any other party or litigant in any other forum. Further, this Order on Consent does not waive the Department's rights or authorities to commence an additional action for any future violations.
- VI. Access.** The Department, including its employees, agents and representatives shall have the right at all reasonable times during normal business hours on normal business days, and after proper notification to the Respondent and proper identification as Department employees, agents and/or representatives, to enter and inspect any property or premises related to this Order for the purpose of ascertaining compliance with the Order. The Respondent shall provide a person to accompany the Department's representative during an inspection when notification is provided, be it written or verbal, at least 24 hours prior to such inspection.
- VII. Force Majeure.** If Respondent cannot comply with a deadline or requirement of this Order on Consent, because of natural disaster, epidemic or pandemic, war, terrorist attack, strike, riot, judicial injunction, or other, similar unforeseeable event which was not caused by the negligence or willful misconduct of

Respondent and which could not have been avoided by the Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement. Respondent shall include in such application the measures taken by Respondent to prevent and/or minimize any delays. Failure to give such notice constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to a claim of non-compliance with this Order on Consent pursuant to this subparagraph.

- VIII. Default.** Respondent's failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL.
- IX. Communication.** Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to Michael Emery, Regional Air Pollution Control Engineer, New York State Department of Environmental Conservation, Region 9, 700 Delaware Avenue, Buffalo, New York 14209.
- X. Modification.** No change or modification to this Order will become effective except as specifically set forth in writing and approved by the Commissioner or a duly authorized representative. All modification requests shall be submitted in writing to the Commissioner, or his/her designee. All modification requests shall include the case number, the named Respondent, and an explanation for the request. Any requests to modify a milestone date must be submitted to the Department prior to the milestone date and include a justification for the requested extended timeframe.
- XI. Indemnification.** Respondent will indemnify and hold the Department, the State of New York, and its representatives and employees (collectively, the "Indemnitees") harmless for all claims, suits, actions, damages, and costs of every name and description arising out of the acts and/or omissions of Respondent (the "Indemnitor"), its trustees, officers, employees, servants, agents, successors, or assigns, in complying or attempting to comply with the provisions of this Order, provided that the Indemnitees give Indemnitor notice of such claims, etc., when raised, and fully defend against them.
- XII. Binding Effect.** Except as otherwise provided herein (including in relation to non-use of this Order in other litigation or administrative proceedings), the provisions, terms, and conditions of this Order shall be deemed to bind Respondent, its heirs, employees, servants, agents, successors and assigns, and all persons, firms, and corporations acting subordinate thereto.

- XIII. **Entirety of Order.** The provisions of this Order constitute the complete and entire Order issued to the Respondent, concerning resolution of only the violations identified in this Order. Terms, conditions, understandings, or agreements purporting to modify or vary any term hereof shall not be binding unless made in writing and subscribed by the party to be bound, pursuant to the Modification paragraph of this Order. No oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by the Respondent shall be construed as relieving the Respondent of its obligations to obtain such formal approvals as may be required by this Order.
- XIV. **Obligations.** This Order is not a permit, or a modification of any permit under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondent's compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein.
- XV. **Effective Date and Period of Order.** The effective date of this Order ("EDO") shall be the date upon which it is signed on behalf of the Department. This Order shall terminate when all requirements imposed by this Order on Consent are completed to the Department's satisfaction.

Dated: 10/25/2022
 Buffalo, New York

Basil Seggos, Commissioner
 New York State Department of
 Environmental Conservation

By: 
 Julie Barrett O'Neill
 Regional Director

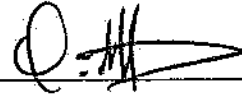
My Commission Expires 06/01/20
 Qualified in Erie County
 No. 0109222839
 Notary Public, State of New York
 Joy A. Lowe

CONSENT BY RESPONDENT
R9-20211108-111

Respondent, Buffalo Sewer Authority, hereby consents to the issuance of the foregoing order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.

Buffalo Sewer Authority

By [Signature]:



Name [Print]:

OLUWALE A. MCFOY

Title:

GENERAL MANAGER

Date:

16 OCT 22

Email:

omcfoy@buffalosewer.org

Acknowledgment

STATE OF NEW YORK)

) ss:

COUNTY OF)

On the 17th day of October, in the year 2022, before me, the undersigned, personally appeared Oluwale McFoy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Joy A. Lowe
Notary Public

Joy A. Lowe
Notary Public, State of New York
No. 01LO6222839
Qualified in Erie County
My Commission Expires 06/01/2026

Appendix A

**COMPLIANCE SCHEDULE
BUFFALO SEWER AUTHORITY
Case No. R9-20211108-111**

MILESTONE	COMPLETION DATE
1. Submit outstanding semiannual deviation and annual compliance reports for the January 2019 through June 2020 reporting periods.	Completed
2. Submit qualified operator training information.	Completed
3. Complete and submit the AERMOD Modeling Report for SSI arsenic and mercury emissions to comply with 6 NYCRR 212 requirements conducted in accordance with Air Dispersion Modeling Protocol for the Bird Island STP Main Incinerator Stack, approved October 22, 2020.	Completed 2/21/2022
4. Submit complete and accurate semiannual and annual reports in accordance with Title V, 40 CFR 60 Subpart Mmmm and 40 CFR 60 Subpart O requirements.	Ongoing
5. Maintain SSI operator certification in accordance with 40 CFR Part 60, Subpart Mmmm requirements and submit complete and accurate documentation of certification for each qualified operator and test administration.	Immediately and Ongoing
6. Develop a plan to ensure 40 CFR 60 Subpart Mmmm SSI operator training is always current and approved by DEC prior to being conducted. For example, BSA should apply to DEC Albany Office for approval to conduct initial and annual refresher operator training in-house by a qualified BSA instructor. If BSA personnel is performing the training of operators, then oversight, including attendee verification and test administration, must be conducted by a DEC approved engineering consultant or a DEC representative.	Within 30 days of EDO
7. Submit an amendment to the Air Title V renewal application as necessary to include all 40 CFR Subpart Mmmm requirements for INC 3 in BSA's Air Title V permit.	Within 30 days of EDO
8. Submit a proposed work plan, for Department review and approval, to monitor arsenic (As) and mercury (Hg) fed to the SSIs, calculate emissions, evaluate compliance with the Annual	Within 30 days of EDO

MILESTONE	COMPLETION DATE
Guideline Concentration (AGC) for As and the Short-term Guideline Concentration (SGC) and Persistent and Bioaccumulative (PB) Trigger for Hg, and identify immediate steps to operate in compliance.	
9. Review pH operating data for wet scrubbers associated with INC 2 and INC 3 and submit a plan to the Department for review and approval to evaluate emissions when the pH of the scrubber liquid at the outlet drops below the pH operating limit. The evaluation plan must include a proposed schedule for completion of the plan and submittal of an evaluation report to the Department.	Within 30 days of EDO
10. Submit to the Department for approval a corrective action plan, which must include a proposed schedule for implementation to resolve excessive deviations from the minimum pH operating limit at the wet scrubber outlet for INC 2 and INC 3 established under 40 CFR 60 Subpart Mmmm.	Within 90 days of the Department's approval of the evaluation report
11. Prepare and submit a Toxic-Best Available Control Technology (T-BACT) evaluation in accordance with DAR-1 Guidelines for the Evaluation and Control of Ambient Air Contaminants Under 6 NYCRR Part 212 for the control of Hg and As for Department review and approval.	Within 90 days of EDO.
12. Conduct and submit a root cause analysis (RCA) of the wet scrubber bypass events that occurred periodically at the Facility from March 27, 2019 through December 17, 2021. Submit a schedule to correct the causes of the wet scrubber bypass events identified by the RCA and a plan to prevent future bypasses for Department review and approval.	Within 60 days of EDO